

Serial No.: 09/695,016
Attorney Docket No.: BL055 GN005
Amendment

REMARKS

Claims 16-27 and 55 are currently pending in the application. Claims 1, 3-15, 28-54, and 56-58 have been canceled pursuant to the Examiner's restriction requirement. Claim 2 was previously canceled by the Applicant. Claim 27 has been amended herein. All other claims remain in their original or previously-amended form. Reconsideration of the Application is respectfully requested.

I. Rejections under 35 U.S.C. § 112

Claim 27 stands rejected under the second paragraph of 35 U.S.C. § 112 as allegedly being indefinite due to the limitation "at least one of the processor and the memory being adapted for" performing the recited steps. This claim has been amended to delete the words "at least one of," thereby removing any ambiguity. As amended, the claim now provides that "the processor and the memory" are adapted for performing the recited steps. Applicant submits that claim 27 is now sufficiently definite and respectfully requests that the rejection be withdrawn.

II. Rejections under 35 U.S.C. § 102

Claims 16-20, 27, and 55 stand rejected as allegedly being anticipated by U.S. Patent No. 5,950,172 to Klingman. As set forth below, these rejections are respectfully traversed.

Independent claim 16 reads as follows:

16. A computer implemented method of collecting data associated with a consumer, comprising:
 - (a) a computer-implemented step of selecting a business to which a consumer feedback communication is to be directed;
 - (b) a computer-implemented step of obtaining one or more ratings relating to the business from the consumer;
 - (c) a computer-implemented step of composing a consumer feedback communication using the obtained ratings; and
 - (d) a computer-implemented step of creating one or more indices from the obtained ratings, the one or more indices categorizing the consumer according to the obtained ratings.

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This claim is not anticipated by the Klingman reference, which fails to teach steps (c) and (d) of this claim.

Klingman describes a system and method where online merchants can solicit satisfaction ratings from consumers who have purchased a product from the merchant. After making a purchase using the merchant's website, the buyer can revisit the merchant's website and click on a "SCORE" button, which opens up a dialog box where the buyer can rate the product on a numerical scale and type in comments. The only analysis performed on the ratings is a simple tabulation of the responses in a graph showing the number of responses at each level of the ratings scale.

Accordingly, the Klingman reference fails to teach "creating one or more indices from the obtained ratings, the one or more indices categorizing the consumer according to the obtained ratings," as required by element (d) of claim 16. Klingman makes no mention of any index or rating being associated with a consumer, except for the consumer's satisfaction rating, which is provided directly by the consumer. No index or any other datum is *created from* the obtained ratings. Furthermore, *individual* buyers are not classified or categorized in any way by the Klingman method because only one fact is known about each buyer: the rating he or she assigned to the particular product then being reviewed. Each buyer is merely a single, dimensionless point in this method of data collection, and there is no way to differentiate individual buyers beyond their isolated ratings of one particular product purchased on one particular occasion. While Klingman does suggest (at col.12, ln.30-63) that certain select categories of buyers (such as Shakespeare lovers, or persons to whom Shakespeare is of little interest) could be evaluated separately by the merchant, the identities of such special interest constituents must be known by the merchant in order to solicit their reviews as a distinct subgroup or category.

The Klingman method provides no way to categorize the individual consumers into distinct groups *based on the ratings obtained from the consumers*; the method simply does not collect information that would allow such a determination to be made. Using the example given in column 12 of the Klingman specification, it might seem tempting to assume that respondents who gave a high rating to a work of fiction based on

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Shakespeare's plays should be classified together as Shakespeare lovers, while those who gave a low rating to the Shakespeare-inspired work should be classified together as persons who have little interest in Shakespeare. This conclusion, however, would be terribly incorrect because it completely ignores the strong possibility (in fact, the likelihood) that some Shakespeare aficionados might find a particular Shakespeare-inspired work to be uninspiring or poorly developed. In order to classify the consumers, some additional information beyond a single product rating is required, and the Klingman method does not collect any such information. A single, isolated product rating given by the consumer could be used to classify the *product ratings* into groups, but it cannot be used to classify the *consumers* into groups because it does not provide any information *about the consumer*. Because Klingman does not teach "categorizing the consumer according to the obtained ratings," it does not anticipate claim 16.

Furthermore, the Klingman reference does not teach "composing a consumer feedback communication using the obtained ratings," as required by element (c) of claim 16. In the Klingman method, the consumer is asked to input "the value of the score to be assigned, along with any comments the user may wish to record." (col.18, ln.5-7) Klingman makes no mention at all of composing a consumer feedback communication *from the obtained ratings* provided by the consumer. The rating provided by the consumer is the only feedback communication in Klingman. The numerical values collected from a plurality of consumers can be analyzed and plotted in a graph illustrating the distribution of scores over all respondents (col.11, ln.37-41), but no further consumer feedback communication is ever composed beyond the initial ratings provided directly by the consumer.

For the foregoing reasons, claim 16 is patentable over Klingman. Claims 17 through 20 depend from claim 16 and are therefore allowable for the same reasons stated above. Claims 27 and 55 require the same elements (c) and (d) from claim 16 and are therefore allowable for the same reasons stated above.

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III. Rejections under 35 U.S.C. § 103(a)

A. Claims 21 and 22 stand rejected as being allegedly obvious from Klingman.

Claims 21 and 22 both depend from claim 16 are therefore allowable over Klingman for the same reasons stated above. Additionally, these claims both require the limitation that "the obtained ratings include a satisfaction rating, a future purchase intent, and future word of mouth influence intent." This feature is completely absent from the Klingman method, where the only obtained rating is a single rating of a product. A single rating of a single product at a single point in time is simply not sufficient to allow any conclusions regarding a consumer's future purchase intent or future word of mouth influence intent. For example, a particular consumer may be extremely unhappy with a particular product but remain loyal to the company due to numerous past experiences that were positive. Such situations are undoubtedly quite common but are undetectable using Klingman's method. Even if future purchase intent or work-of-mouth influence could be determined from the single product rating collected in the Klingman method, it would still not teach the limitation in claims 21 and 22, which require that the future purchase intent and future word of mouth influence intent be *obtained ratings* from the consumer (i.e. not derived from some other rating).

Additionally, claims 21 and 22 require the step of "combining the satisfaction rating, the future purchase intent, and the future word of mouth influence intent to create a loyalty index indicating a level of loyalty of the consumer to the business." This step is not taught or suggested by Klingman because there are no such ratings to *combine* (Klingman obtains only a single rating about a product from the consumer), and Klingman makes no mention of any index, such as a loyalty index, being *created*.

Claim 22 further requires "a business feedback response sent by the business in response to the consumer feedback communication" and a consumer response to this business feedback response including "a second set of obtained ratings associated with the business," from which "a second loyalty index indicating a level of loyalty of the consumer to the business" can be created. These features are completely absent from Klingman.

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For the foregoing reasons, claims 21 and 22 are patentable over Klingman.

B. Claims 23-26 stand rejected as being allegedly obvious from Klingman in view of the website www.zagat.com, archived in May 1999.

Claims 23 through 26 all depend from claim 16 and therefore require the step of "composing a consumer feedback communication using the obtained ratings," as discussed above. This step is not taught or suggested by Klingman or zagat. Therefore, these claims are not rendered obvious by these references. Additionally, claim 24 requires that the obtained ratings further comprise "an indication of *the business*' share of the volume of purchase by the consumer of goods or services within the product category," and claim 26 requires that the obtained ratings further include "an indication of frequency of purchase by the consumer of goods or services provided by *the business*." (emphasis added) Contrary to the Office action's assertion, the Zagat reference does not mention collecting information about the share of the consumer's purchases that are attributed to *the particular business in question* or the consumer's frequency of purchase from *the particular business in question*. Zagat's survey questions asking for the consumer's frequency of travel or dining say nothing about a particular business's share of the consumer's travel or dining. Likewise, Zagat's Top-10 Most Popular Restaurants list, which lists those restaurants that have received the most votes from the pool of surveyed consumers *as a group*, says nothing about any particular consumer's patronage of any particular business. These kinds of information that are collected in the methods of claims 24 and 26 are not taught or suggested by Zagat or Klingman.

Additionally, claims 23 through 26 are not obvious from Klingman in view of Zagat because there is insufficient motivation to combine these two references. Klingman is directed to a system and method that enables businesses, at their own choosing, to solicit a satisfaction rating from each customer who has purchased a product or service from the business. Each business operates its own web servers to handle its sales and solicit ratings from its customers, and each business controls the dissemination of the compiled ratings received from its customers. Zagat, by contrast, publishes a

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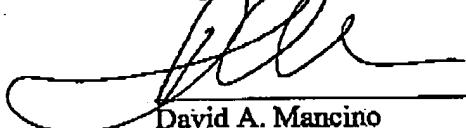
travel guide that evaluates many third-party businesses (such as hotels and restaurants) using comments and feedback provided by the public. The collection and dissemination of the feedback and ratings is controlled by Zagat, not by the subject businesses being evaluated, and the ratings are not transmitted to the businesses. The goal of Zagat's survey is to publish a comprehensive travel guide that provides a wealth of information to assist the traveling public in making decisions about the multitude of choices in travel planning. Klingman, which is concerned with providing a particular business with a means to solicit product ratings from its recent customers and enabling these ratings to be used primarily by the business itself for self-evaluation or advertising purposes, employs a different model to solve a different problem. Accordingly, there is insufficient motivation to combine the teachings of these two references to support an obviousness rejection.

IV. Conclusion

In light of the foregoing, it is respectfully submitted that claims 16-27 and 55, now pending, are distinguishable from the references cited, and in condition for allowance. Reconsideration and withdrawal of the rejections of record is respectfully requested.

If the Examiner wishes to discuss any aspect of this response, please contact the undersigned at the telephone number provided below.

Respectfully submitted,



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